

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

05-CR-357-BR

Plaintiff,

OPINION AND ORDER

v.

LESHAWN ALBERT BARR,

Defendant.

**KARIN J. IMMERGUT**

United States Attorney

**PAMALA R. HOLSINGER**

Assistant United States Attorney

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Attorneys for Plaintiff

**LESHAWN ALBERT BARR**

No. 62688-065

Sheridan Federal Correctional Institution

P.O. Box 5000

Sheridan, OR 97378

Defendant, *Pro Se*

**BROWN, Judge.**

On September 9, 2005, a federal grand jury indicted Defendant on one count of Felon in Possession of a Firearm in violation of 21 U.S.C. § 922(g)(1). On January 31, 2006, Defendant pled guilty. On May 24, 2006, the Court sentenced Defendant to a 37-month term of imprisonment and a three-year term of supervised release.

On February 28, 2008, Defendant filed a Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b)(3) seeking a new trial on the grounds of "fraud on the Court" involving his "defective indictment."

On April 22, 2008, the Court issued an Opinion and Order in which it denied Defendant's Motion for Relief from Judgment with leave for Defendant to request the Court to reconsider the merits of the Motion under 28 U.S.C. § 2255. Defendant did not request the Court to reconsider the merits of his Motion.

On June 3, 2008, Defendant appealed the Court's Opinion and Order to the Ninth Circuit. On June 20, 2008, the Ninth Circuit issued an Order in which it noted Defendant had filed his Notice of Appeal more than ten court days after entry of this Court's Opinion and Order, but within 30 calendar days from the expiration of the time to file a notice of appeal. The Ninth Circuit, therefore, remanded this matter to the district court

for the limited purpose of permitting the district court to provide appellant notice and an

opportunity to request that the time for filing the notice of appeal be extended for a period not to exceed 30 calendar days from the expiration of the time for filing a notice of appeal based on a showing of excusable neglect.

On July 15, 2008, the Court issued an Opinion and Order in which it directed Defendant to advise the Court in writing no later than August 4, 2008, whether he requested the Court to extend the time for filing his Notice of Appeal and, if so, to provide the Court with an explanation for his failure to file a Notice of Appeal within the ten days required by the Federal Rule of Appellate Procedure 4.

On August 12, 2008, the Court entered an Order in which it noted Defendant may not have received the Court's July 15, 2008, Opinion and Order due to the apparent relocation. The Court, therefore, extended the time until September 2, 2008, for Defendant to provide the Court with an explanation for his failure to file a notice of appeal within the ten days required by Federal Rule of Appellate Procedure 4 as set out in the Court's Opinion and Order issued July 15, 2008. The Court also sent Defendant a copy of its July 15, 2008, Opinion and Order together with the August 12, 2008, Order to the address provided by Defendant.

Defendant did not respond to the Court's August 12, 2008, Order.

### DISCUSSION

"In a criminal case, the district court has discretion under [Federal Rule of Appellate Procedure] 4(b) to grant an extension of time [for filing a notice of appeal] upon finding 'excusable neglect.'" *United States v. Prairie Pharmacy, Inc.*, 921 F.2d 211, 212 (9<sup>th</sup> Cir. 1990). Federal Rule of Appellate Procedure 4(b)(4) provides:

Upon a finding of excusable neglect or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Here Defendant has not shown either excusable neglect or good cause even though he was allowed the opportunity to do so. The Court, therefore, declines to extend the time for Defendants filing of a notice of appeal pursuant to Rule 4(b)(4).

### CONCLUSION

For these reasons, the Court declines to extend the time required by Federal Rule of Appellate Procedure 4(b)(4) for

Defendant to file a notice of appeal.

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of September, 2008.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge